

Division of Consumer Affairs

## News Release

**Tennessee joins 39 states in largest ever multistate agreement to settle claims with Sears for unlawful collection practices.**

**FOR IMMEDIATE RELEASE**

June 5, 1997

Tennessee today joined 39 states in an agreement in principle with Sears to stop its alleged illegal collection practices from consumers who have filed Chapter 7 petitions in United States Bankruptcy Court. The action is being called the largest known multistate consumer settlement in this country.

The agreement, which is subject to final negotiations and court approval, calls for Sears to forgive an estimated \$125 million in consumer debts improperly obtained by Sears and repay that amount to affected consumers, with interest. Sears will also have to pay \$35 million to the states and \$5 million to benefit consumer education. In addition, the company must establish a \$25 million fund to further compensate affected consumers inconvenienced by Sears.

Sears has agreed to cease practices forbidden by the U.S. Bankruptcy Code, and will be in violation of state court orders as well as federal law if it fails to fully comply with the Bankruptcy Code when entering into reaffirmation. Among other things, those provisions require that Sears explain the consequences of reaffirmation to anyone who signs a reaffirmation agreement (a document in which Chapter 7 debtor agrees to pay a particular debt even though the debt would be discharged in bankruptcy). Sears must also inform Chapter 7 debtors that they have the right to change their minds and can rescind the reaffirmation within 30 days.

The multi-state investigation revealed that Sears for at least ten years allegedly pursued Chapter 7 debtors to sign reaffirmation agreements by using high-pressure tactics. The company allegedly sent letters and threatened by telephone to take away consumers\* property if they did not sign. The states allege that Sears systematically overstated its rights in an effort to secure reaffirmation agreements from Chapter 7 debtors.

Sears allegedly never filed many of the reaffirmations with the bankruptcy court, which violates U.S. bankruptcy laws. The U.S. Bankruptcy Code requires that all reaffirmation agreements be filed, and where the debtor is not represented by counsel, it requires that the reaffirmation be approved by the court.

Sears has identified more than 80,000 customers nationwide who signed reaffirmation agreements, which were not filed with the court, between July 1994 and April 1997. They will be required to identify all such consumers from 1992 to the present.

"Our best estimates are that we currently have about 300 victims here in Tennessee since 1994," Tennessee Attorney General John Knox Walkup said. "We are hopeful this agreement will rectify the problems these and any other consumers who have not yet been identified have had.

"We would encourage any consumer who has signed a reaffirmation agreement, which was not filed with the court, with any company, not just Sears, to contact the Tennessee Division of Consumer

Affairs."

Mark Williams, director of the Tennessee Division of Consumer Affairs, said, "We want consumers to realize they do not have to sign reaffirmation agreements. In some cases, you might want to sign a reaffirmation agreement, for instance, to keep paying for your car or some other asset even though you are going through bankruptcy. I would suggest anyone going through bankruptcy seek advice from their attorney to make an informed decision before signing any reaffirmation agreement."

Sears has agreed as part of the proposed settlement to repay all money consumers paid on these unlawful debts. The settlement requires Sears to identify every affected consumer from January 1992 to the present and then repay each. Anyone who signed a reaffirmation agreement prior to January 1992, which was not filed with the court, must file a claim form and with the help of Sears provide proof that they did so. Those pre-1992 consumers will be entitled to the same reimbursement and compensation as the others.

Details of how to file a claim and who is eligible will be announced after the final terms of the agreement in principle are confirmed. Those consumers approved will have their debts stricken; be repaid for any money they paid after signing a reaffirmation agreement in addition to interest and penalties; and will be charged no interest on new purchases made since their bankruptcy. Affected customers will also receive part of a \$25 million fund Sears will establish to further compensate consumers for their inconvenience.

For more information contact the Tennessee Division of Consumer Affairs:  
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